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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION  
ORACLE AMERICA, INC.,  
Plaintiff,  
vs. Case No. 3:10-cv-03561-WHA  
GOOGLE, INC.,  
Defendant.

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PURSUANT TO THE PROTECTIVE ORDER  
VIDEO DEPOSITION OF JAMES MALACKOWSKI  
San Francisco, California  
Wednesday, March 17, 2016  
Volume I

REPORTED BY:  
REBECCA L. ROMANO, RPR, CSR No. 12546  
JOB NO. 2265299  
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1 some of the other technical issues that you rely on  
2 in support of your causal nexus conclusion. One of  
3 them is your conclusion that Android would not work  
4 if the SSO and declaring code were removed.

5 Is it fair to say, that's an input to  
6 your causal nexus analysis?

7 A. I think it is an input, both as described  
8 in my report and based upon my experience. In  
9 particular, I would reference my experience in the  
10 Brocade A10 case, and the language of Judge Grewal  
11 in that case, where he specifically cites to the  
12 notion, a very equivalent notion, as an indication  
13 to consider in a causal nexus -- and, frankly, in  
14 reference to my causal nexus -- opinion.

15 Q. Is there any other portion of the Android  
16 operating system that if it were removed, the OS  
17 would not work?

18 A. Yes.

19 Q. What other portions of Android would  
20 disable the system if they were removed?

21 A. That's more of a technical question. I  
22 do understand that there would be other portions --  
23 you know, more than one, frankly -- that, if  
24 removed, would disable the system.

25 Q. For instance, if the Linux kernel were

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1 taken out of Android, Android wouldn't work, would  
2 it?

3 A. I -- I think that's fair. And as I  
4 considered this issue, there's a chart that's been  
5 used in trial that is sort of a block diagram that  
6 sets forth all of the contributions to the Android  
7 platform and list the Java technology as part of  
8 the core of that diagram.

9 So, yes, there would be other things, but  
10 I think what the technical experts have concluded  
11 is that, as it relates to Android as developed, the  
12 APIs at issue are clearly central and core. They  
13 are not trivial. And, as I have concluded, they  
14 are a contribution to the profits that were earned.

15 Q. You, in fact, concluded they are a  
16 100 percent contribution to the profits that were  
17 earned, correct?

18 A. No, not at all. I make substantial  
19 apportionment in my analysis to the platform; and  
20 then ultimately to a subset of that, based on  
21 profitability.

22 Q. Yes, but you assign 100 percent of the  
23 contribution of the platform to the 37 APIs,  
24 correct?

25 A. Not true. If I were to assign -- if I

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1           A.     No, I did not.

2           Q.     How would one go about analyzing that  
3     issue?  If you wanted to do a second or third level  
4     apportionment, what you would -- what you would  
5     want to see?

6           A.     At that level, which is based upon our  
7     conversation, which is a technical level, that's  
8     outside the core of my area of expertise.  I would  
9     seek the counsel of the technical experts.

10          Q.     What information would you, as a damages  
11     quantifier, find persuasive in order to enable you  
12     to do a second level apportionment between all the  
13     implementing code in the Android core libraries and  
14     the structure, sequence, and organization, on the  
15     other hand, of 37 API packages?

16                 MS. HURST:  Object to the form.

17                 THE DEPONENT:  To the extent that there  
18     was a detailed technical analysis that was  
19     confirmed by the business records of the case,  
20     that's the type of information I would find  
21     persuasive.  I can't tell you that I would find it  
22     persuasive per se, because we're speaking  
23     hypothetically, but that's the type of thing that I  
24     would look to.

25          Q.     (By Mr. Purcell)  What type of detailed

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1 record at 6:23 p.m. This marks the beginning of  
2 Media No. 7 in the deposition of James Malackowski.

3 Q. (By Mr. Cooper) Mr. Malackowski, please  
4 refer to paragraphs 192 to 199 of your -- of your  
5 reply report. And this is just for -- to put it in  
6 context.

7 Would the recession have had some impact  
8 on Java ME revenues?

9 A. Yes, but for a recession they would have  
10 been greater. But I think using, again, the very  
11 conservative growth rate that I did in recognition  
12 of the fact that the mobile industry was perhaps  
13 the only industry that was, relatively speaking,  
14 isolated from the effects of the recession, I  
15 believe that my analysis is accurate. But clearly,  
16 but for recession, it would have been even more.

17 Q. Is it your testimony that your estimate  
18 did take into account the magnitude of the impact?

19 A. Yes, qualitatively.

20 Q. Now, Mr. Malackowski, would Android, in  
21 some form, exist if Google had not used the SSOs  
22 and the declaring code of the 37 Java APIs?

23 A. So, to some extent, that's speculative.  
24 But given the importance to Google to reach the  
25 mobile marketplace, and their fear of being locked

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1 out, I'm sure they would have attempted something.  
2 What that is, I don't know. Its measure of  
3 success, I don't know. Whether it would have been  
4 launched in time to meet the window, I doubt it.

5 Q. Mr. Malackowski, are your estimates of --  
6 estimates of lost profit and disgorgement additive  
7 in determining the amount you believe the court  
8 should award Oracle, or is it your estimate of  
9 disgorgement partially duplicative of your estimate  
10 of lost profits?

11 A. That is a very good fourth question.

12 And they are overlapping. I suspect that  
13 there is -- I believe that there is part of the  
14 lost profits calculation that is not duplicative of  
15 the disgorgement calculation. But if asked and if  
16 disgorgement is, in fact, awarded, I would not  
17 expect the trier of fact to add on top of it my  
18 lost profits calculation.

19 MR. COOPER: Given the fact that if I  
20 follow up, you'll accuse of me asking you a fifth  
21 question, I'm not asking -- I'm not following up.  
22 I'm done.

23 THE DEPONENT: Thank you, sir.

24

25 /////